

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-01 INR-07
L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15
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R 171749Z MAY 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 8335
INFO USMISSION USBERLIN
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION NATO

C O N F I D E N T I A L BONN 08505

E.O. 11652: GDS
TAGS: PFOR, PGOV, WB, GW, UR
SUBJECT: SOVIET PROTEST ON ACTIVITY OF FRG FEDERAL
PROSECUTOR IN BERLIN

REFS: (A) USBER 917; (B) BONN 2484;
(C) USBER 519; (D) USBER 350

1. BONN GROUP REACHED AD REF AGREEMENT MAY 16 ON TEXT
OF RESPONSE TO SOVIET STATEMENT OF JANUARY 28 PROTESTING
ROLE OF FRG FEDERAL PROSECUTOR IN BERLIN IN CONNECTION
WITH LORENZ KIDNAPPING CASE. ACTION REQUESTED: APPROVAL
OF TEXT SET OUT IN PARAGRAPH 3.

2. THE DRAFT REPLY DEVELOPED BY THE ALLIED MISSIONS
IN BERLIN WAS FIRST DISCUSSED BY THE BONN GROUP ON
MARCH 9. IN RESPONSE TO A REQUEST BY THE OTHER MEMBERS
OF THE BONN GROUP, THE US REP UNDERTOOK TO SHORTEN THE
BERLIN DRAFT. THE REDRAFT IS ESSENTIALLY THE SAME AS
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THE DRAFT SET OUT BELOW. FINAL SUBMISSION OF THE
DRAFT REPLY HAS BEEN DELAYED BY FRG OPPOSITION TO THE
USE OF THE PHRASE "LEGISLATION ADOPTED AS BERLIN LAW,"
WHICH WAS INCLUDED IN THE US DRAFT, EVEN THOUGH WE
TOOK THAT PHRASE FROM AN EARLIER AD REF DRAFT REPLY TO A
SOVIET PROTEST ON THE ACTIVITIES OF THE FEDERAL PROSE-
CUTOR LAST YEAR (BONN 5078 AND 13572)

HOWEVER, THE FRG APPARENTLY DOES NOT NOW WISH TO STATE OFFICIALLY THAT FRG LEGISLATION ADOPTED VIA THE "MANTELGESETZ" PROCEDURE BECOMES "BERLIN LAW." THE DEADLOCK WAS BROKEN BY OUR SUGGESTION YESTERDAY THAT WE REFER BACK TO THE LANGUAGE OF THE ALLIED KOMMANDATURA LETTER OF FEBRUARY 23, 1952, WHICH AUTHORIZED THE "MANTELGESETZ" PROCEDURE AND USE SOME OF THE LANGUAGE CONTAINED THEREIN. IT WAS AGREED TO SUBSTITUTE THE PHRASE "LEGISLATION TAKEN OVER BY THE BERLIN LEGISLATURE IN ACCORDANCE WITH ESTABLISHED PROCEDURES" FOR THE PHRASE QUOTED ABOVE WHICH THE FRG CONSIDERS INAPPROPRIATE.

3. TEXT OF DRAFT REPLY:

I REFER TO YOUR STATEMENT OF 28 JANUARY CONCERNING THE ROLE OF THE FEDERAL PROSECUTOR IN THE INVESTIGATION OF INDIVIDUALS SUSPECTED OF HAVING PARTICIPATED IN THE KIDNAPPING OF HERR LORENZ AND TO THE RELEVANCE OF THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971 TO THIS MATTER. I WOULD WISH TO RECALL THE STATEMENT BY THE CHAIRMAN POLAD ON THIS SUBJECT ON AUGUST 6, 1976, IN RESPONSE TO A PREVIOUS SOVIET STATEMENT AND TO STATE THE FOLLOWING IN THE NAME OF THE THREE POWERS:

1. IT IS INCORRECT TO STATE THAT THE TRIAL IS BEING CONDUCTED BY THE GENERAL PROSECUTOR OF THE FRG
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SINCE, AT THIS STAGE, NO TRIAL HAS YET COMMENCED.

2. IT IS CORRECT THAT EVIDENCE IS BEING GATHERED IN THE FEDERAL REPUBLIC AND IN BERLIN BY OFFICIALS OF THE OFFICE OF THE FEDERAL PROSECUTOR IN ORDER TO DETERMINE WHETHER THE MATTER WILL BE BROUGHT TO TRIAL.

3. THE COMPETENCE OF THE FEDERAL PROSECUTOR IN BERLIN DERIVES FROM LEGISLATION TAKEN OVER BY THE BERLIN LEGISLATURE IN ACCORDANCE WITH ESTABLISHED PROCEDURES AND IS EXPRESSLY SUBJECT TO ALLIED RIGHTS AND RESPONSIBILITIES. THE ACTIVITIES OF THE FEDERAL PROSECUTOR, WHEN EXERCISING THIS COMPETENCE, ARE NOT ACTS PERFORMED IN EXERCISE OF DIRECT STATE AUTHORITY OVER THE WESTERN SECTORS OF BERLIN AND ARE IN NO WAY INCONSISTENT WITH THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971.

4. THE FINAL DECISION AS TO WHETHER AND BY WHOM
THOSE PERSONS ACCUSED OF CRIMES IN CONNECTION WITH THE
KIDNAPPING OF PETER LORENZ AND OF RELATED CRIMINAL
ACTIVITIES WILL BE PROSECUTED WILL, AS IN THE PAST,
BE REACHED IN CONFORMITY WITH LEGISLATION IN FORCE
IN THE WESTERN SECTORS OF BERLIN AND IN ACCORDANCE
WITH THE LEGAL REQUIREMENTS OF EACH CASE.
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Message Attributes

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Disposition Approved on Date:
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